

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 18-10913
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2019

Lyle W. Cayce
Clerk

MARION DAVID HAGER,

Petitioner-Appellant

v.

UNDERWOOD, Warden,

Respondent-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:18-CV-355

Before DENNIS, OWEN, and OLDHAM, Circuit Judges.

PER CURIAM:*

Marion David Hager, now federal prisoner # 54182-380, moves for leave to proceed in forma pauperis on appeal and for appointment of appellate counsel. Hager is appealing the district court's summary dismissal for lack of jurisdiction of his 28 U.S.C. § 2241 habeas corpus petition challenging his 72-month sentence for possessing a firearm as a convicted felon, as well as its denial of his Federal Rule of Civil Procedure 60(b) motion for reconsideration.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 18-10913

We note that there is an issue regarding the timeliness of Hager's notice of appeal. The district court entered its final judgment on May 1, 2018. Any notice of appeal had to be filed within 60 days. *See* 28 U.S.C. § 2107(b); FED. R. APP. P. 4(a)(1)(B). Hager's "petition to reconsider" did not extend this time because it was filed more than 28 days after the district court issued its judgment. *See* FED. R. APP. P. 4(a)(4)(A); FED. R. CIV. P. 59(d)–(e). Because the 60-day "appeal filing deadline [is] prescribed by statute," it affects our jurisdiction. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 16 (2017) (citing *Bowles v. Russell*, 551 U.S. 205, 210–13 (2007)).

Hager's notice of appeal was dated July 9, 2018, and filed July 13, 2018. It was therefore untimely.¹ But "[w]e construe [Hager's] notice of appeal, which asserted reasons for his untimely filing, as a motion under Federal Rule of Appellate Procedure 4(a)(5)(A)" to extend the time to file a notice of appeal. *Kramer v. Castaneda*, 599 F. App'x 174, 174 (5th Cir. 2015). We therefore REMAND so that the district court can rule on that motion. Upon ruling, the district court shall return the case to this Court for dismissal or further proceedings, as may be appropriate.

¹ Hager's notice of appeal would have been timely as to the district court's denial of his petition to reconsider, but we do not understand him to be appealing that order because his opening appellate brief does not address it.